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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/858,235	05/17/2001	Andrew Sinclair	08364.0017	1787
22852	7590	08/28/2007		
FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP 901 NEW YORK AVENUE, NW WASHINGTON, DC 20001-4413			EXAMINER STEVENS, THOMAS H	
			ART UNIT 2121	PAPER NUMBER
			MAIL DATE 08/28/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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Office Action Summary	Application No. 09/858,235	Applicant(s) SINCLAIR, ANDREW	
	Examiner Thomas H. Stevens	Art Unit 2121	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05/22/2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-51 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,9,18,21,22,30,38 and 47-51 is/are rejected.
- 7) ☒ Claim(s) 2-8,10-17,19,20,23-29,31-37 and 39-46 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Claims 1-51 were examined.

Section I: Reopening Prosecution

2. In view of the appeal brief filed on 05/22/2007, PROSECUTION IS HEREBY REOPENED. A new ground of rejection is set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options: (1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or, (2) request reinstatement of the appeal.

If reinstatement of the appeal is requested, such request must be accompanied by a supplemental appeal brief, but no new amendments, affidavits (37 CFR 1.130, 1.131 or 1.132) or other evidence are permitted. See 37 CFR 1.193(b)(2). Reopening is necessitated based on applicants' argument in the brief. Based on applicants' brief and interpretation, examiner has provided new art and looks forward to advancing prosecution.

Section II: Non-Final Rejection

Claim Objections

3. Claims 2-8, 10-17, 19, 20 and 23-29, 31-37, 39-46 are objected to as being dependent upon a rejected base claim, but *could* be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claimed Subject Matter Not in Specification

4. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: The "first simulated batch" limitation in claim 1 is not defined within the original disclosure.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 1,9,18, 21, 22,30, 38, and 47-51 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. See MPEP § 2173.05(c). Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131

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USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949). In the present instance, claims 21, 47 and 48 recites the broad recitation of **“determine apparatus required to perform a process; providing apparatus corresponding to said items of equipment simulated; and utilizing said apparatus to perform said industrial process simulated”** (claim 21); **“executable processor steps for performing”** (claim 47); and the **“executable processor steps for causing a programmable computer”** (claim 48), respectively, and the claim 1, for example, **“recites a method of simulating an industrial process comprising the steps of: storing model data indicative of a plurality of processes involving a number of items of equipment to be used in an industrial process to be simulated; initiating a first simulated batch for simulated processing; generating scheduling data for scheduling the initiation of simulated batches after the initiation of said first simulated batch by, when simulated processing of a latest initiated batch is initiated: identifying items of equipment liable to be involved in simulated processing of a next batch to be initiated after said latest initiated batch; utilizing said stored model data to determine for each item of said identified items of equipment a minimum possible simulated processing time required for simulated processing of said latest initiated batch; determining for said identified items of equipment which are currently in use for processing batches currently being processed, the greatest time of use of previously simulated in processing batches using said items of equipment; and generating scheduling data for the next batch to be initiated after the latest initiated batch**

to cause the time between the initiation of said latest initiated batch and said next batch within said simulation to be equal to the greater of the maximum of said minimum possible simulated processing times for said items of equipment involved in simulated processing of said next batch and said greatest time of use for said identified items of equipment currently in use; and generating output data indicative of a simulation of an industrial process utilizing said stored model data and said generated scheduling data” (claim 1) which is the narrower statement of the range/limitation.

Section III: Response to Arguments

101/102(b)/103(a)

7. Applicants are thanked for responding to these issues. Rejections are withdrawn.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mr. Tom Stevens whose telephone number is 571-272-3715.

If attempts to reach the examiner by telephone are unsuccessful, please contact examiner's supervisor Mr. Anthony Knight 571-272-3687. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status

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information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>.. Answers to questions regarding access to the Private PAIR system, contact the Electronic Business Center (EBC) (toll-free (866-217-9197)).

A handwritten signature in black ink, appearing to read 'Anthony Knight', is positioned above the printed name.

Anthony Knight
Supervisory Patent Examiner
Tech Center 2100